IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO.845 OF 1998

Splendour Investments Pvt. Limited...Petitioners

Vs.

Parasurampuria Estate Developers
Pvt. Ltd.....Respondent

Mr.Snehal Shah i/b. M/s.Dhhiralkar i/b. Shiralkar & Co., for
the Petitioners.
None for the Respondents.

CORAM: A.M. Khanwilkar,J.
DATE : 4th August, 2005

P.C.:

1. Heard Counsel for the petitioners. None appears for the Respondents, though served. No reply has been filed opposing this petition.

2. According to the petitioners they had given intercorporate deposit of Rs.25.00 lakhs to the respondent company. That fact is acknowledged by the respondent company as can be seen from the receipt dated 10th October, 1996, Exhibit "B". The receipt issued under the signature of Director of the respondent company not only concedes having received a sum of Rs.25.00 lakhs but also the obligation to pay interest at the rate of 24% per annum for 3 months within which time the amount was to be repaid. In fact the respondent company had issued post-dated cheque in respect of the principal amount of Rs.25.00 lakhs, copy whereof is appended to the petition at Exhibit "C". The said cheque when presented, however, was returned with endorsement "fund not arranged for". Inspite of repeated requests made by the petitioners to remit the outstanding amount along with interest upto date, no payment was received which forced the petitioners to send statutory notice on 31st March, 1997. In the meantime the respondent company had sent communication on

February 28, 1997 acknowledging its liability to pay the aforesaid amount along with interest and assured to pay the said amount. The reason mentioned for delay in payment was due to business problems faced at the relevant time. Be that as it may, the respondent company once again sent reply on April 3, 1997 admitting their liability to pay the outstanding amount of Rs.25.00 lakhs along with interest. However, inspite of assurance given no amount was offered to the petitioners which forced the petitioners to file the present petition under Sections 433 and 434 of the Companies Act on 17th August, 1998.

3. This Court before admitting the petition gave notice to the respondent company. However, the respondent company has not chosen to appear nor bothered to file any reply to the petition. Eventually on 25th January, 1999 this Court passed a conditional order accepting the claim of the petitioners. Under the conditional order the respondent company was given an opportunity to deposit the amount. Even that opportunity has not been availed of by the respondent company. This Court formally admitted the petition on 1st July, 1999 as conditional order was not complied with respondent company. Admission of the petition has been duly advertised and published. Inspite of that no appearance has been made by the respondent company nor any reply has been filed. In that sense the assertions made in the petition have remained uncontroverted. The respondent company, as is seen from the documents on record,has admitted the liability to pay the outstanding amount of Rs.25.00 lakhs along with interest accrued thereon. The fact remains that the said amount has not been paid so far. The legal presumption arising against

the respondent company that it is unable to pay its debts has remained unrebutted. In such circumstances this Court has no option but to allow the petition in terms of prayer clauses (a) and (b). Ordered accordingly.

(A.M. KHANWILKAR, J.)